IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19986 of 2007

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANLAL NEMAJI NNAMA - Petitioner(s)
Versus
STATE OF GUJARAT THRO' & 4 - Respondent(s)

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Appearance :
MS. KRUTI M SHAH for Petitioner
Mr.Dashrath R.Chauhan,learned AGP for Respondents No. 1 to 4.

Mr.N.L.Ramnani for MR GT DAYANI for Respondent No.5

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 21/11/2007

ORAL JUDGMENT

1. Leave to amend the prayer clause is granted.

2. Rule. Mr.Dashrath R.Chauhan, learned Assistant Government Pleader waives service of rule on behalf of the respondents No.1 to 4. Mr.N.L.Ramnani, learned counsel, waives service of rule on behalf of the respondent No.5. With the consent of the learned counsel for the parties, the matter is taken up for final disposal today.

3. This petition has been filed under Articles 226 and 227 of the Constitution of India with the following prayers:

> *"[A] admit and allow this petition;*
> *[B] issue appropriate writ, order or direction for quashing and setting aside the order dated 10.4.2007 (dispatched on 11.4.2007) passed by the respondent No.1 in RTS Revision Application No.25/2006.*
> *[C] Pending admission, final hearing and disposal of this petition, stay the implementation and operation of the orders dated 10.4.2007 passed by the respondent No.1, order dated 31.5.2006 passed by the*

respondent No.2 and order dated 16.11.98 passed by the respondent No.3.

(D) grant such other and further relief as thought fit in the interest of justice."

4. Briefly stated the case of the petitioner is that he was the adopted son of one Ninama Nemaji Danaji, who was owner of agricultural land bearing Survey Nos.120/2 and 117/2, situated at village Virpur, Taluka Bhiloda. The deed of adoption was registered in the office of Sub-Registrar,Bhiloda at Sr.No.4-403/9/9/1992, and on the basis of this document, the name of the petitioner was entered in the revenue records vide entry No.914 of 1.12.1993, which entry was also certified. The respondent No.5 herein, being aggrieved by this entry preferred RTS Appeal No.58 of 1997 before the Additional Collector, Himatnagar, which came to be allowed on 16.11.1998. As a consequence thereof, the entry No.914, vide which the name of the petitioner was entered in the revenue records, was directed to be cancelled. Against the order dated 16.11.1998, the petitioner preferred R.T.S.Revision alongwith an application for condonation of delay, being delay condonation Application No.2598 of 2000 on 16.6.2000, before the

Collector, Sabarkantha. This application was rejected on 31.5.2006 on the ground that no sufficient cause for condoning the delay has been shown, and further, that one Regular Civil Suit No.245 of 1997 between the parties is pending before the Civil Court. It is the case of the petitioner that the order dated 31.5.2006 was despatched only on 27.9.2006. The same is produced at Annexure “B”.

5. The averments in the petition reveal that petitioner, thereafter presented R.T.S.Revision Application No.25 of 2006 alongwith an application with the prayer to stay the implementation of the order dated 31.5.2006, on various grounds mentioned in the petition. The application praying for grant of stay was rejected by the respondent No.1 on 10.4.2007, in the absence of the petitioner and his advocate. The copy of the order dated 10.4.2007 is annexed as Annexure “C”.

6. This Court has heard Ms.Kruti M.Shah, learned counsel for the petitioner, Mr.D.R.Chauhan, learned Assistant Government Pleader for respondents No.1 to 4 and Mr.N.L.Ramnani for Mr.G.T.Dayani on behalf of respondent No.5. Ms.Kruti Shah,learned counsel for

the petitioner fairly submits that notice intimating that the hearing of the matter before the respondent No.1 was to take place on 4-4-2007, was served upon her. However, for certain unavoidable reasons beyond her control, she could not attend the hearing on that date and the respondent No.1, vide order dated 10.4.2007 (Annexure “C”), has dismissed the stay application on the ground that neither the petitioner nor the learned counsel for the petitioner were present on that date, and from this it should be understood that they have nothing further to say in the matter. From the order dated 10.4.2007, it does not transpire that the petitioner i.e. Ramanlal Nemaji Ninama had also been served with the notice of the hearing on 4.4.2007. It is no doubt true that the learned counsel was aware of the said date of hearing but if, for certain unavoidable reasons, she was unable to attend the hearing, the petitioner should not be made to suffer, due to the dismissal of the application, especially when no individual notice was served upon him. Ms.Kruti M.Shah has confined her arguments to the limited prayer that an opportunity of being heard may be given to the petitioner, whose cause may not suffer for no fault on his part.

7. Without going into the merits of the case or entering into the controversy in dispute, this court is of the opinion that the interest of justice would be served if the parties are given an opportunity of hearing before the respondent No.1, on the stay application.

8. In view of the above, the order dated 10.4.2007 passed by the respondent No.1 is set aside. The respondent No.1 is directed to issue fresh notice to the parties in advance, intimating them about the date of hearing on the stay application. The parties may appear before the respondent No.1 and argue the matter, who may then pass an appropriate order in accordance with law. It is made clear that this order may not be taken to have any bearing on the merits of the case, or be construed to mean that the order dated 10-4-2007 is being set aside after hearing the parties on merits.

9. Rule is made absolute to the above extent. There shall be no order as to costs. Direct service is permitted.

(Smt.Abhilasha Kumari,J)

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